

**IN THE HIGH COURT OF SINDH AT KARACHI.  
(CONSTITUTIONAL JURISDICTION)**

Presented on 22-5-14

Constitution Petition No. D -

2759

of 2014

*[Signature]*  
Deputy Registrar (Writ)

**Sheikh Wajahat Ali**

Proprietor of

**M/S S. ZIA-UL-HAQ & SONS**

C-127, Block-9, Gulshan-e-Iqbal,

Karachi through his authorized

representative **Muhammad Yahya**

**Siddiqui**.....

PETITIONER

**VERSUS**

1. **Government of Sindh,**

Through Chairman

Sindh Revenue Board,

Shaheen Complex, 6<sup>th</sup> Floor,

Karachi.

2. **Commissioner (Enforcement)**

Sindh Revenue Board,

Shaheen Complex, 6<sup>th</sup> Floor,

Karachi.

3. **Assistant Commissioner (HQs)**

Sindh Revenue Board,

Shaheen Complex, 6<sup>th</sup> Floor,

Karachi.

4. **Assistant Commissioner (Caterers)**

Sindh Revenue Board,

Shaheen Complex, 6<sup>th</sup> Floor,

Karachi.....

RESPONDENTS

**PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF PAKISTAN, 1973**



ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No. D - 2759 of 2014

Date	Order with signature of Judge
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1. For orders on Misc. No.13538/2014
2. For orders on Misc. No.13539/2014.
3. For katcha peshi
4. For orders on Misc. No.13540/2014.

26.05.2014:

Mr. Kaukab Sabahuddin, advocate for the petitioner.

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Through instant petition, the petitioner has impugned the recovery Notice dated 21.03.2014, issued by the respondent No.4, which according to learned counsel, has been issued pursuant to an order dated 04.02.2014 passed under Section 23(5) of the Sindh Sales Tax and Services Act, 2011. Learned counsel submits that the order under Section 21(5) of the Sindh Sales Tax on Services Act, 2011 was passed without issuance of any show cause notice, whereas, no copy of the order was served upon the petitioner and the petitioner only come to know about such order after receipt of impugned recovery Notice, whereafter, the copy of the impugned order has been supplied.

Learned counsel for the petitioner was confronted as to why the impugned order has not been assailed by filing an appeal before the Commissioner (Appeals), SRB in terms of Section 57 of the Sindh Sales Tax on Services Act, 2011, to which the learned counsel for the petitioner submits that the petitioner is willing to file an appeal, however, per learned counsel, since there is an apprehension that the respondents will adopt coercive measures for the recovery of the impugned demand, and the order has been passed without issuance of show cause notice, therefore, the petitioner has approached this Court under Article 199 of the Constitution.

We are not inclined to concur with the submission of the learned counsel for the petitioner nor persuaded to entertain instant petition, which appears to have been filed to circumvent the limitation provided for filing an appeal against the impugned order, with a view to merely seek stay of the recovery of the impugned demand. Petitioner, instead of having availed the alternate remedy as provided under the special statute



i.e. filing an appeal in terms of Section 57 of the Sindh Sales Tax on Services Act, 2011, before the Commissioner (Appeals), SRB alongwith an application for stay of impugned demand of sales tax, in terms of Sub-Section (4) of Section 58, has directly approached this Court under Article 199 of the Constitution, without any factual and legal justification. We may observe that a party cannot be allowed to bye-pass or abandon the forum, which may be provided under the special statute for such purpose nor this Court can examine the disputed question of facts including the fact regarding non-issuance of show cause notice and non-service of the impugned order upon the petitioner, as alleged in the instant petition. Reference in this regard can be made to the case of Khalid Mehmood v. Collector of Customs (1999 SCMR 1881).

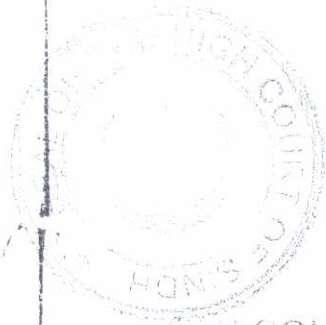
We are of the opinion that instant petition is devoid of any merits, hence not maintainable, and the same is hereby dismissed in limini alongwith listed applications. However, the petitioner is at liberty to seek remedy as may be available to the petitioner under Sindh Sales Tax on Services Act, 2011 by filing an appeal before the Commissioner (Appeals), SRB alongwith stay application in terms of Section 58(4) of the Sindh Sales Tax on Services Act, 2011, which may be considered and decided by the Commissioner (Appeals) strictly in accordance with law.

*S. A. Akbar*  
~~Signature~~  
**JUDGE**

**JUDGE**

Authenticated To Be True Copy

*C A 11/06/2014*  
 Assistant Magistrate



HIGH COURT OF SINDH AT KARACHI

*Seven June 2014*  
*Eleven June 2014*

*11-06-2014*

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TOTAL : 55: 20

*C A 11/06/2014*